

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Mooreland and Woodward,)
Oklahoma))

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

MM Docket No. _____
RM- _____

To: The Chief, Allocations Branch

**SUPPLEMENT TO
PETITION FOR RULE MAKING AND
REQUEST FOR ORDER TO SHOW CAUSE**

FM 92 Broadcasters, Inc. ("FM 92"), by its attorneys, hereby supplements its pending Petition for Rule Making and Request for Order to Show Cause (filed March 21, 1996) to include the attached Letter to F. Joseph Brinig and Kathryn R. Schmeltzer and Kevin M. Walsh, from Linda B. Blair, Chief, Audio Services Division, Mass Media Bureau (June 18, 1996) (hereinafter the "Blair Letter"). As discussed below, the Blair Letter demonstrates that Channel 261C1 is available for allotment purposes. Thus, there is no impediment to grant of FM 92's request to institute a rule making proceeding to amend Section 73.202(b), Table of Allotments, FM Broadcast Stations, to: (1) delete Channel 261C1 at Woodward, Oklahoma; (2) allot Channel 228A at Woodward; and (3) allot Channel 261C1 at Mooreland, Oklahoma.

DISCUSSION

1. On January 22, 1996, FM 92 filed a petition for rule making requesting that the Commission realLOT Channel 261C1 from Woodward to Mooreland, Oklahoma. That petition was returned as "unacceptable for consideration" because, according to the Allocations Branch, Channel 261C1 remained reserved for use by Fuchs Communications, Inc. ("Fuchs"), licensee of

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KWFX-FM, Woodward, Oklahoma, despite the fact that in 1994 Fuchs requested and was granted cancellation of its construction permit to upgrade to Channel 261C1. See Letter to Kathryn R. Schmeltzer and Kevin M. Walsh, from John A. Karousos, Chief, Allocations Branch, Policy and Rules Division (February 21, 1996). In response to the dismissal of its first petition for rule making, FM 92 filed the above-captioned petition.

2. As FM 92 noted in its most recent petition for rule making, it appears illogical that Channel 261C1 would remain allotted to Woodward for Fuchs' use when Fuchs requested cancellation of its construction permit to upgrade to the channel and the request was granted. See Fuchs' March 21, 1996 Petition for Rule Making, at footnote 3. Furthermore, Fuchs continued to operate on its licensed channel -- Channel 228A. The fact that Channel 228A was never reallocated to Woodward and Channel 261C1 was never deleted from Woodward is an apparent oversight that was never corrected by either Fuchs or the Commission. Thus, in an effort to ensure that Channel 261C1 is made available for use, FM 92 formally requested in its March 21, 1996 Petition for Rule Making the substitution of Channel 228A for Channel 261C1 at Woodward and the issuance of an order to show cause why Fuchs' KWFX(FM) license should not be modified to specify operation on Channel 228A.

3. In a related matter, FM 92 filed a Petition for Reconsideration of the Commission's grant of the assignment of the KWFX license and canceled construction permit from Fuchs to Classic Communications, Inc. See FCC File No. BAPLH-951128GJ. FM 92 argued that Fuchs could not assign a construction permit that had been canceled.

4. The Audio Services Division agrees with FM 92's assessment of the status of Channel 261C1. In the Blair Letter, the Chief of the Audio Services Division stated that "cancellation of the [Fuchs' construction permit to upgrade to Channel 261C1] had become final


at the time that the assignment application for KWFX-FM was filed.” Further, the Chief noted that the new licensee of KWFX-FM, Classic Communications, Inc. “has stated that it ‘does not intend to utilize the Channel 261 C1 construction permit’ and relinquishes and surrenders any right which it or KWFX-FM may have to the construction permit.” Thus, neither Fuchs nor its successor in interest, Classic Communications, has any claim to Channel 261C1. There are, therefore, no obstacles remaining in the Commission’s way to grant FM 92’s Petition for Rule Making to delete Channel 261C1 at Woodward, allot Channel 228A at Woodward, and allot Channel 261C1 at Mooreland.

CONCLUSION

WHEREFORE, the premises considered, FM 92 Broadcasters, Inc. respectfully requests the Commission to issue a Notice of Proposed Rule Making to amend Section 73.202(b), Table of Allotments, FM Broadcast Stations, to: (1) delete Channel 261C1 at Woodward, Oklahoma; (2) allot Channel 228A to Woodward and modify the license of KWFX-FM accordingly; and (3) allot Channel 261C1 to Mooreland, Oklahoma.

Respectfully submitted,

FM 92 BROADCASTERS, INC.

By: 
Kathryn R. Schmeltzer
Kevin M. Walsh

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WASHINGTON, D.C. 20554

IN REPLY REFER TO:
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In re: KWFX-FM
Woodward, Oklahoma
File No. BAPLH-951128GJ
Petition For Reconsideration

Dear Counsel:

On March 7, 1996 the Commission granted the assignment of license of the above-captioned station from Fuchs Communications, Inc. ("Fuchs") to Classic Communications, Inc. ("Classic"). On March 25, 1996, FM 92 Broadcasters, Inc. ("FM 92") filed a Petition for Reconsideration of the assignment to determine whether an expired construction permit (File No. BPH-911220IE) for Channel 261 C1 (issued as a modification to the KWFX-FM facilities in 1992) was assigned with the KWFX-FM license. In response, Classic has stated that it "does not intend to utilize the Channel 261 C1 construction permit," and relinquishes and surrenders any right which it or KWFX-FM may have to that construction permit. However, the Commission's records reveal that the subject construction permit was cancelled on September 2, 1994. Cancellation of the construction permit had become final at the time that the assignment application for KWFX-FM was filed. Therefore, the staff's action granting the assignment application concerned only the license for KWFX-FM.

In any event, on May 8, 1996, FM 92 voluntarily requested dismissal of its Petition for Reconsideration, which is hereby DISMISSED.

Sincerely,

Linda B. Blair
by Linda B. Blair
Chief, Audio Services Division
Mass Media Bureau

CERTIFICATE OF SERVICE

I, Ana Julissa Ayala, do hereby certify that I have this 9th day of July, 1996, mailed by first-class United States mail, postage prepaid, copies of the foregoing **"SUPPLEMENT TO PETITION FOR RULE MAKING AND REQUEST FOR ORDER TO SHOW CAUSE"** to the following:

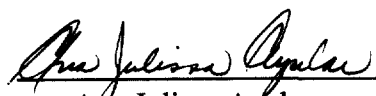
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